

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

| | | |
|------------------------------------|---|---------------------|
| KIMBERLY POFF, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | CIV-15-936-R |
| |) | |
| OKLAHOMA DEPARTMENT |) | |
| OF HUMAN SERVICES; |) | |
| ED LAKE, an individual; and |) | |
| TONY BRYAN, an individual, |) | |
| |) | |
| Defendants. |) | |

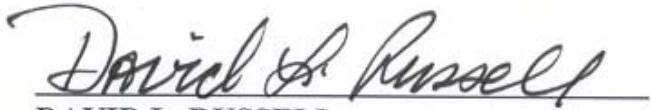
ORDER

This matter comes before the Court on Motions to Dismiss, filed by Defendant Oklahoma Department of Human Services (Doc. No. 9) and Defendants Ed Lake and Tony Bryan (Doc. No. 10), to which Plaintiff has filed a single response (Doc. No. 17) and Defendants have single replied (Doc. No. 20). In her response Plaintiff made a request for leave to amend in the event the Court find she failed to sufficiently allege her claims. Doc. No. 17, p. 27. While this request would have been better presented as a motion, filed separately from the response to the motions, the Court finds that in the interest of clarifying the issues, that leave to amend should be granted.

Plaintiff filed this action in the District Court of Oklahoma County. She attempted to allege a number of claims therein against each of the three Defendants, although it is not entirely clear from the first amended petition which claims are pressed against which

particular defendant. In response to the motions to dismiss Plaintiff concedes that certain of her claims lack merit, but fails to address other claims for which Defendants sought dismissal, and in one instance alters the theory of recovery, conceding that she has no claim under the statute cited, but arguing that case law supports her claim. The Court finds that in light of Plaintiff's concession that certain of her claims lack merit and in light of the confusion presented by portions of her amended petition and her response to the motions to dismiss, that amendment of the pleading would assist Defendants, the Court and Plaintiff alike.¹ As such, Plaintiff is hereby granted leave to amend her allegations one final time. Plaintiff shall file her amended pleading not later than December 31, 2015.

IT IS SO ORDERED this 21st day of December, 2015.


DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE

¹ By way of example the Court notes that the Amended Petition pleads at one place that Plaintiff started her employment at DHS on January 7, 2014, and in another that she started on May 1, 2014 and in a third that she was promoted by DHS on May 1, 2014. *See* Doc. No. 1-3, ¶¶ 4, 6, 16.